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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF OHIO  
4 WESTERN DIVISION

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

8 JENNIFER L. SMITH,

9 Defendant.

Case No. 3:10CR506

Toledo, Ohio

Monday, January 3, 2011

2:50 p.m.

10 TRANSCRIPT OF ARRAIGNMENT AND PLEA HEARING  
11 BEFORE THE HONORABLE JAMES R. KNEPP, II  
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Government: Thomas A. Karol  
15 Office of the U.S. Attorney - Toledo  
16 Four SeaGate, Suite 308  
Toledo, Ohio 43604  
(419) 259-6376

17 For the Defendant: Jerry P. Purcel  
18 Attorney at Law  
3230 Central Park, E, Suite 106  
Toledo, Ohio 43617  
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19 Court Reporter: Caroline Mahnke, RMR, CRR  
20 Federal Building & U.S. Courthouse  
21 2 South Main Street, Suite 568  
Akron, Ohio 44308  
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23  
24 Proceedings recorded by ECRO; transcript produced by  
25 computer-aided transcription.

1           THE COURT: We are here on the matter of United  
2 States of America versus Jennifer L. Smith. We're here  
3 today for, I believe, initial appearance and plea on the  
4 case.

5           Present in the courtroom are Ms. Smith and her  
6 attorney, Mr. Purcel. On behalf of the government, Mr.  
7 Karol is here, Assistant United States Attorney Karol,  
8 and -- I'm sorry?

9           MR. KAROL: I'm being assisted by United States  
10 Secret Service Agent Louis Johns.

11          THE COURT: Welcome, Mr. Johns.

12          Also here from pretrial services is Ms. Lafferty.  
13 Are the parties ready to proceed?

14          MR. PURCEL: Yes, Your Honor.

15          MR. KAROL: The government is, and I already put  
16 on the Court's bench the waiver of indictment signed by the  
17 defendant and counsel as well as the agreement to consent to  
18 proceed with these proceedings in front of the magistrate,  
19 Your Honor.

20          THE COURT: Okay.

21          Ms. Smith, the Court understands it's your intention  
22 to waive indictment and to enter a plea of guilty this  
23 afternoon. Before I can do that, I have to take care of  
24 some business and kind of give you a roadmap of what we're  
25 going to do.

1           The first thing I have to do is get your consent to my  
2 taking your plea as opposed to an Article III judge, and  
3 I'll explain to you what that means.

4           I have to satisfy myself that you're competent to  
5 waive indictment, plead guilty at this time. I have to make  
6 sure that you understand the trial rights which will be  
7 waived if I recommend that your guilty plea be entered. I  
8 have to make sure that you fully understand the nature of  
9 the charges. And I have to make sure that your -- I have to  
10 satisfy myself that your waiver and plea are voluntarily  
11 made and not coerced in any way. So we will kind of go  
12 through a little roadmap to get to that.

13           The first matter we have to address is your waiver of  
14 the right to have the proceeding conducted by what's called  
15 an Article III judge. Article III judges are appointed by  
16 the president, confirmed by the senate for a term of life.  
17 They are set forth in Article III of the Constitution.  
18 That's why they call them that.

19           Do you understand you have the right to have this  
20 matter heard today by an Article III judge?

21           THE DEFENDANT: Yes.

22           THE COURT: Do you understand that I am not an  
23 Article III judge. I'm not a district judge. I'm what's  
24 called a magistrate judge. What that means is that I am  
25 appointed by other judges in the district for a term of

1 eight years subject to reappointment. Do you understand  
2 that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Have you discussed with your  
5 attorney my conducting these proceedings, and have you  
6 concluded that it's in your best interest to proceed with me  
7 here today even though I'm not a United States district  
8 judge?

9 THE DEFENDANT: Correct.

10 THE COURT: As you know, this case is assigned to  
11 Judge -- Senior District Judge James G. Carr. Are you  
12 voluntarily and knowingly giving up your right to plead  
13 before Judge Carr or another Article III judge, and do you  
14 voluntarily consent to appearing before me for these  
15 proceedings today?

16 THE DEFENDANT: Yes.

17 THE COURT: Thank you.

18 I have received a consent to -- consent to my  
19 receiving your plea of guilty today.

20 Is this your signature on that written consent?

21 THE DEFENDANT: Correct, yes.

22 THE COURT: Has anyone made any threats or  
23 promises to coerce or induce you to enter into this waiver?

24 THE DEFENDANT: No.

25 THE COURT: Okay. Upon your answers, upon your

1 answers to my questions and upon review of the written  
2 consent, I will find that you have knowingly and voluntarily  
3 consented to my conducting this proceeding today and I'll  
4 make your written consent a part of the record in this case,  
5 if my courtroom deputy will accept it for filing.

6 In a moment, Ms. Smith, we're going to place you under  
7 oath and I'm going to ask you some questions and give you  
8 some information about the impact of your plea and I'll make  
9 sure that you understand the information that I give you.

10 Before I do that, I want to cover just a couple of  
11 things with you. First of all, although you're going to be  
12 waiving certain rights today and I'm going to go through a  
13 litany of rights that you'll be waiving, right to the trial,  
14 certain appellate rights, so forth, the one thing that  
15 you're not going to have to waive today is your right to  
16 counsel.

17 Nobody is going to ask you at any point during this  
18 proceeding to waive your right to counsel. That stays with  
19 you before, during, and after this proceeding today. And  
20 what that means is if you need to speak with Mr. Purcel at  
21 any point as we're going today, you stop, and you can talk  
22 to him at any point if you need to talk with him, okay?  
23 It's very important --

24 THE DEFENDANT: Yes.

25 THE COURT: -- for me to understand -- so you

1 understand you are not waiving your right to counsel. Do  
2 you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Another thing I need to make  
5 sure you understand is in a minute we are going to place you  
6 under oath. Once we do that, anything you say subjects you  
7 to the penalties of perjury.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: You also need to understand that  
11 giving truthful answers to some of the questions that I'm  
12 going to ask you is going to necessarily result in your  
13 waiving your right to not testify against yourself as  
14 guaranteed by the Fifth Amendment because some of your  
15 answers are going to be incriminating, because as part of  
16 this plea this afternoon you're going to be required to  
17 admit your guilt.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand everything that  
21 I've told you so far?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay.

24 Madam deputy, would you please swear the defendant.

25 (The defendant was sworn in.)

1 THE COURT: Ma'am, would you please state your  
2 full name for the record.

3 THE DEFENDANT: Jennifer L. Smith.

4 THE COURT: Have you ever had any other names?

5 THE DEFENDANT: My maiden name, Radjewski.

6 THE COURT: Okay. Could you spell that.

7 THE DEFENDANT: R-A-D-J-E-W-S-K-I.

8 THE COURT: And when did you change your name?

9 THE DEFENDANT: When I was married in 1999.

10 THE COURT: How old are you?

11 THE DEFENDANT: 37.

12 THE COURT: Where do you live?

13 THE DEFENDANT: 3155 Rocksberry, in Toledo.

14 THE COURT: Are you married?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you have any dependent children?

17 THE DEFENDANT: I do.

18 THE COURT: How many? What ages?

19 THE DEFENDANT: Two, and the oldest is six; the  
20 youngest will be two next month.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Some college but no degree.

23 THE COURT: No problems reading and writing  
24 English, though, right?

25 THE DEFENDANT: No. No, sir.

1 THE COURT: What kind of work have you done in  
2 the past few years?

3 THE DEFENDANT: I have worked at various  
4 financial institutions, banks, credit union, doing  
5 collections of mortgages, to consumer loans, to checking  
6 accounts, things of that nature.

7 THE COURT: Are you in good physical health?

8 THE DEFENDANT: I believe so.

9 THE COURT: Okay. Are you under the influence of  
10 any drugs, alcohol, or medication that would impair your  
11 ability to understand what's going on here today?

12 THE DEFENDANT: No.

13 THE COURT: Have you taken any drugs, alcohol, or  
14 medication in the last few days?

15 THE DEFENDANT: No.

16 THE COURT: Your mind is clear and you know why  
17 you're here and you understand the purpose of this hearing?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you been under the care of a  
20 doctor or hospital for a mental condition in the past five  
21 years?

22 THE DEFENDANT: No. Never.

23 THE COURT: Mr. Purcel, have you had any  
24 difficulty communicating with Ms. Smith?

25 MR. PURCEL: Absolutely not, Your Honor.



1 THE COURT: Have you discussed the case with her?

2 MR. PURCEL: Yes, I have, Your Honor.

3 THE COURT: Do you believe she understands the  
4 purpose and nature of this hearing today?

5 MR. PURCEL: Yes, Your Honor. We've discussed  
6 this case for the last year.

7 THE DEFENDANT: Almost two years, yeah.

8 THE COURT: Do either you or Mr. Karol have any  
9 question or doubt as to Ms. Smith's competence at this  
10 hearing today?

11 MR. PURCEL: None whatever.

12 MR. KAROL: The government does not, Your Honor.

13 THE COURT: Upon Ms. Smith's answers to my  
14 questions and the statements of counsel, the Court makes a  
15 finding that are you competent to enter a plea this  
16 afternoon.

17 Ms. Smith, have you had enough time and opportunity to  
18 speak with your lawyer about this matter?

19 THE DEFENDANT: Yes.

20 THE COURT: Have you told your lawyer everything  
21 you know about the case?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you satisfied with the advice,  
24 competence, and efforts of your lawyer?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you discussed all possible legal  
2 defenses to the charges against you?

3 THE DEFENDANT: I believe so, yes.

4 THE COURT: Are you satisfied with the legal  
5 assistance you've received?

6 THE DEFENDANT: Yes.

7 THE COURT: Remember, you can stop at any point  
8 during this hearing if you need to and speak with him, okay.

9 THE DEFENDANT: Thanks.

10 THE COURT: Have you received and read a copy of  
11 the criminal information -- indictment -- which was filed in  
12 this case?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: I'm sorry, information, yeah. I said  
15 indictment. I meant information.

16 The information having been filed on December 6, 2010.  
17 I'm not sure I gave the case number and caption at the top  
18 here, but it's Jennifer L. Smith, Case Number 3:10CR506.

19 You have had an opportunity to review the information?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you discussed it with your  
22 lawyer?

23 THE DEFENDANT: I have.

24 THE COURT: Mr. Purcel, will you waive its formal  
25 reading and any defects?

1 MR. PURCEL: Yes, we will, Your Honor.

2 THE COURT: Mr. Karol, would you please summarize  
3 the charges, including the maximum penalties, mandatory  
4 minimums, guideline calculations, special assessment,  
5 supervised release terms, and any restitution provisions or  
6 forfeiture requirements.

7 MR. KAROL: Yes, Your Honor.

8 This charge is bank fraud in violation of Title 18  
9 United States Code, Section 1344. With bank fraud we have  
10 to establish that there was a financial institution, and  
11 that defendant knowingly devised a scheme and  
12 artifice -- knowingly devised a scheme and artifice to  
13 defraud such financial institution.

14 With respect to the penalties for bank fraud, there is  
15 a maximum statutory penalty of up to 30 years imprisonment  
16 and/or a \$1 million fine.

17 Upon conviction and sentencing, there is a mandatory  
18 special assessment of \$100.

19 Following any term of imprisonment, the Court can  
20 impose supervised release up to five years.

21 Should the defendant violate the conditions of her  
22 supervised release, the Court can revoke the supervised  
23 release term and order the defendant to serve a term of  
24 imprisonment of the entire term of supervised release  
25 without any credit for the time prior to the violation

1       itself.

2               Furthermore, with respect to -- oh, let me -- before I  
3       forget, Your Honor, sentencing guidelines is but one factor.  
4       A sentencing guidelines computation has been done by the  
5       government. In a moment I'll explain. We have two  
6       computations based on acceptance of responsibility.

7               With regard to the immediate loss -- and I'll explain  
8       that in a second -- as a result of defendant's actions on  
9       her own account we believe her offense level would be nine,  
10      in a four to ten month sentencing range, which is known as a  
11      Zone B sentencing range.

12              If it is the larger dollar amount, the restitution or  
13      loss amount, I should say, the offense level would be as  
14      high as 13 with a 12 to 18 month sentencing guideline range.

15              Sentencing guidelines are simply one factor the Court  
16      must consider in imposing a sentence. It's simply an  
17      advisory, one of the -- it's known as the advisory  
18      sentencing guideline.

19              That brings us to the issue of loss and/or  
20      restitution, Your Honor. The loss from defendant's own  
21      account as a result of her bank fraud is just over \$20,000.

22              However, the credit union for whom she worked stated  
23      it suffered an additional loss on other accounts, collateral  
24      damage, you may call it -- and I'll explain when I give the  
25      statement of facts -- an additional loss to other accounts

1 in the amount of \$52,000.

2 And I'll be clear when I give the statement of facts  
3 she did not steal from those accounts. Simply other losses  
4 were created as a result of her action.

5 THE COURT: Okay.

6 Mr. Purcel, were you able to understand the  
7 summarization of the charges and penalties and so forth, and  
8 do you concur with Mr. Karol's characterization?

9 MR. PURCEL: Yes, Your Honor.

10 THE COURT: Thank you.

11 Upon your review of the information, Ms. Smith, and  
12 upon hearing Mr. Karol's summarization, do you understand  
13 the nature of the charges against you?

14 THE DEFENDANT: Yes.

15 THE COURT: As well as the maximum penalties,  
16 mandatory minimums, guideline calculation, special  
17 assessment, supervised release term, and restitution? Do  
18 you understand all that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand if you enter a plea  
21 with respect to those charges, you'll be admitting your  
22 guilt and waiving any right to claim innocence in this case?

23 THE DEFENDANT: Correct.

24 THE COURT: It's my understanding that you wish  
25 to waive indictment in this case, so I need to go over what

1 that means and make sure you understand what you're doing  
2 there, okay?

3 Do you understand that if you do not waive indictment,  
4 you may not be charged with a felony unless a grand jury  
5 finds by a return of an indictment that there was probable  
6 cause to believe that a crime was committed and that you  
7 committed the crime.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that in order to  
11 obtain an indictment, the government must present the  
12 charges to a grand jury before the matter can even be  
13 brought to court. And a grand jury is composed of between  
14 16 and 23 persons. At least 12 grand jurors must find  
15 probable cause before you can be indicted.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that a grand jury  
19 might or might not vote probable cause in any given case,  
20 including this one?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that if you waive  
23 indictment by the grand jury the case will proceed against  
24 you upon the information just as though you had been  
25 indicted?

1 THE DEFENDANT: Correct.

2 THE COURT: It's my understanding that you  
3 prepared a written waiver of indictment; is that correct?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you feel it's in your best  
6 interest to enter into this written waiver?

7 THE DEFENDANT: At this time, yes.

8 THE COURT: Have any threats or promises been  
9 made to induce you to enter into this waiver?

10 THE DEFENDANT: No.

11 THE COURT: Mr. Purcel, do you know of any reason  
12 why your client should not waive indictment in this case?

13 THE DEFENDANT: None, Your Honor.

14 THE COURT: Ms. Smith, do you understand  
15 everything we have done so far?

16 THE DEFENDANT: Yes.

17 THE COURT: Is it your wish to waive indictment  
18 by the grand jury?

19 THE DEFENDANT: It is.

20 THE COURT: And this is your signature?

21 THE DEFENDANT: Correct, yes.

22 THE COURT: Upon that, the Court will make a  
23 finding that you've knowingly and voluntarily waived  
24 indictment in this case and will file your written waiver as  
25 a part of the record.

1 Ms. Smith, have you reviewed your constitutional  
2 rights with Mr. Purcel?

3 THE DEFENDANT: Yes.

4 THE COURT: I understand that, but I'm going to  
5 go ahead and review certain of those rights with you here on  
6 the record so I can satisfy myself that you understand them,  
7 okay?

8 THE DEFENDANT: Um-hum.

9 THE COURT: Under the Constitution of the United  
10 States you have the right to a trial either to a court or to  
11 a jury. And at that trial you would have a right to  
12 confront and cross-examine witnesses that the government  
13 might bring to testify against you.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At the trial you would have a process  
17 for obtaining witnesses to testify on your behalf, your own  
18 witnesses. And at the trial the government would be  
19 required to prove your guilt beyond a reasonable doubt.

20 Do you understand both of those things?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that you could not  
23 be compelled to testify against yourself at a trial?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that by waiving and



1 entering your plea you're giving up your right not only to  
2 the trial but to all of those other rights that I just  
3 listed?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand you have a right to  
6 plead not guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: You have a right to plead not guilty  
9 even if you are guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if you plead  
12 not guilty, you would have the right to a speedy trial at  
13 which you would have the right to be represented by a  
14 lawyer, and if you could not afford a lawyer, the Court  
15 would appoint one to represent you.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if this matter  
19 were to proceed to trial, you would be presumed innocent,  
20 and you wouldn't have to prove that you're innocent. The  
21 burden of proof in a criminal trial stays with the  
22 government until the very end.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: If you had a trial you could not be

1 forced to testify but you would have the right to testify if  
2 you chose to. And if you chose not to testify, no inference  
3 or suggestion of guilt could be drawn from the fact that you  
4 did not testify.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: And that's an important right that  
8 every defendant has in a criminal case.

9 If your trial was before a jury, a large number of  
10 potential jurors whose names are chosen at random would be  
11 summoned to this courthouse and we would ultimately comprise  
12 a jury of 12 persons after you and your lawyer had an  
13 opportunity to participate in the jury selection process and  
14 to exclude jurors for cause, for example, if a juror was  
15 biased or for some other legally sufficient reason. You  
16 would also have a right to exclude certain jurors for no  
17 cause whatsoever. Those are called peremptory challenges.  
18 A jury would have to agree unanimously before it could find  
19 you guilty.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand everything I've  
23 told you so far?

24 THE DEFENDANT: Yes.

25 THE COURT: If at trial you were found guilty,

1 you would also then have a right to appeal your conviction  
2 under certain circumstances.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You would also have a statutory right  
6 to appeal your sentence under certain circumstances.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if you plead  
10 guilty you're waiving those rights? And if your plea is  
11 accepted, there will be no trial, and I will enter a  
12 recommendation that a finding of guilty be entered and that  
13 the district judge will consider that recommendation. And  
14 assuming he concurs, he will enter a finding of guilty upon  
15 the record and then sentence you on the basis of your plea  
16 after considering a presentence investigation.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you also understand that by  
20 pleading guilty you will be deprived of valuable civil  
21 rights such as the right to vote, the right to hold public  
22 office, the right to serve on a jury, and the right to  
23 possess any kind of firearm.

24 Are you willing to give up these rights?

25 THE DEFENDANT: Yes.

1           THE COURT: The government outlined the maximum  
2 penalty, including not only the sentence but mandatory  
3 minimum, special assessment, supervised release term, and  
4 restitution and forfeiture requirements.

5           Do you understand that following a prison term you  
6 will be subject to a period of supervised release and that  
7 violation of the conditions of supervised release can result  
8 in revocation of that release and additional jail time  
9 without any credit for supervised release time already  
10 served prior to the violation?

11           THE DEFENDANT: Yes.

12           THE COURT: Do you understand that restitution  
13 may be ordered as a condition of your sentence?

14           THE DEFENDANT: Yes.

15           THE COURT: Depending on your financial status,  
16 the Court can order you to pay the cost of your confinement  
17 or supervised release. Do you understand that?

18           THE DEFENDANT: Yes.

19           THE COURT: Do you also understand as a result of  
20 your guilty plea an assessment of \$100 per count must be  
21 imposed by the Court?

22           THE DEFENDANT: Yes.

23           THE COURT: Have you and your lawyer talked about  
24 the sentencing guidelines?

25           THE DEFENDANT: Yes.

1           THE COURT: You heard Mr. Karol indicate at least  
2 a preliminary sentence calculation. Do you understand that  
3 it's not possible to calculate with any specificity your  
4 sentence at this point in time?

5           THE DEFENDANT: Yes.

6           THE COURT: Once a presentence investigation has  
7 been completed, the Court will be in a position to determine  
8 a guideline range based upon your crime in this case and  
9 your criminal history.

10          Do you understand that?

11          THE DEFENDANT: Yes.

12          THE COURT: Under the current state of the law,  
13 the Court must treat the guidelines as advisory, meaning  
14 they're not binding but they are a factor the Court must  
15 consider.

16          Do you understand that?

17          THE DEFENDANT: Yes.

18          THE COURT: The Court will consider the  
19 guidelines as well as the provisions of Section 3553(a) of  
20 Title 18 which contain factors a judge must consider in  
21 imposing a sentence. Those factors include but are not  
22 limited to the nature and circumstances of the crime, and  
23 the history and characteristics of the defendant, the need  
24 for the sentence to reflect the seriousness of the offense,  
25 to promote respect for the law, and to provide just

1 punishment, to afford a deterrent to criminal conduct, to  
2 protect the public from further crimes, and to provide you  
3 with needed educational or vocational training, medical  
4 care, drug, or other correctional treatment.

5 Mr. Karol, would you please summarize what the  
6 evidence would be if this case were to proceed to trial?

7 And Ms. Smith, I'm going to ask you to listen very  
8 carefully because at the end of this I'm going to  
9 essentially ask you to adopt it as your own statement. I  
10 could make you stand up and basically say here is what I  
11 did, but I think it's more productive and it's easier for  
12 the process if we have Mr. Karol just explain what the  
13 evidence would be.

14 When he is done, I'm going to ask you do you agree  
15 with that, because you can't plead guilty unless there is  
16 evidence to support that you actually committed the crime.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Mr. Karol.

20 MR. KAROL: Thank you, Your Honor.

21 The critical events took place between March of 2008  
22 and January of 2009. During that time period, Ms. Smith was  
23 employed at the Directions Credit Union here in Northwest  
24 Ohio which is a federally insured credit union. She also  
25 had bank accounts at three other financial institutions:

1 The WoodForest National Bank, Capital One Bank, and  
2 Washington Mutual Bank.

3 The Directions Federal Credit Union, as is the case  
4 with many credit unions, processes their checks through a  
5 larger institution. In the case of Directions Credit Union,  
6 they processed it through the Corporate One Federal Credit  
7 Union, which in turn processed it through the federal  
8 reserve system.

9 In the event that a check is returned as having  
10 non-sufficient funds, it ultimately is returned to the  
11 Directions Credit Union. And the Corporate Federal Credit  
12 Union in turn charges the Directions Credit Union's account  
13 for all the items returned as non-sufficient funds.

14 A daily list identifying those items along with copies  
15 of the individual checks is provided to Directions Credit  
16 Union by the Corporate Federal Credit Union in the  
17 processing system.

18 During the relevant time period, we would establish  
19 that Ms. Smith wrote checks from her bank accounts at the  
20 three other institutions I mentioned, WoodForest National  
21 Bank, Capital One Bank, and Washington Mutual Bank. Those  
22 checks were written on insufficient funds accounts. She did  
23 not have adequate funds to cover the checks in those  
24 institutions.

25 She deposited those checks into her Directions Credit

1 Union account and used those funds for her personal uses.

2 Ultimately the checks go back to the institutions.  
3 It's determined they are non-sufficient checks, and they're  
4 routed back again through that federal reserve system  
5 through the Corporate Federal Credit Union and back to the  
6 Directions Credit Union.

7 At this point in time, we would establish that on  
8 separate occasions, we believe up to 21 separate occasions,  
9 the defendant intercepted the mail. When I say intercepted,  
10 she opened the mail, whatever that Directions Credit Union  
11 got, destroyed the report identifying her checks as  
12 non-sufficient checks as well as checks accompanying that  
13 report, including her checks.

14 In essence, she was doing a check kite, Your Honor,  
15 and destroying the checks as they came back, the  
16 insufficient checks as they came back to the Directions  
17 Credit Union.

18 The loss -- and this is what I was explaining earlier.  
19 The loss on her account itself that was discovered was  
20 \$20,429. Additionally, Directions Credit Union has advised  
21 the government that there apparently is a 90-day federal  
22 reserve -- the federal reserve only keeps documentation for  
23 90 days regarding these items of non-sufficient funds and  
24 that a member credit union must act upon that daily list I  
25 mentioned that gets sent back to the credit union in a



1 timely manner. Otherwise no collections action can take  
2 place or can occur, and the credit union ends up absorbing  
3 the loss.

4 Because of the time that lapsed before the credit  
5 union discovered the fraud, there were a number of other  
6 members, according to the credit union, who also had  
7 non-sufficient funds that were beyond that 90-day window.

8 The Directions Credit Union has advised the government  
9 that additional members whose accounts were overdrawn or had  
10 deposited non-sufficient checks totalled \$52,787.03.

11 Mr. Purcel and I have discussed this matter, and I  
12 fully expect defendant to contest any responsibility for  
13 that loss, assuming there is that loss, any responsibility  
14 of this defendant for that loss nor, according to Mr.  
15 Purcel, should she be held accountable in determining the  
16 loss amount.

17 But that's a sentencing computation, Your Honor, not a  
18 matter with respect to whether in fact she committed the  
19 offense.

20 Did I confuse it sufficiently?

21 THE COURT: No. I understand.

22 Is that it?

23 MR. KAROL: And we would establish all those  
24 facts, Your Honor, if we proceeded to trial.

25 THE COURT: Taking aside the collateral damage

1 issue, meaning the \$50,000, what is the amount that -- from  
2 her own account? 20,000 --

3 MR. KAROL: It was \$20,429, Your Honor.

4 THE COURT: Okay. Taking aside the collateral  
5 damage characterization that you heard Mr. Karol make, do  
6 you agree with his statement in every other regard?

7 THE DEFENDANT: I do. I think.

8 THE COURT: Well, you need to tell me. If there  
9 is something you don't agree with let me hear it.

10 THE DEFENDANT: Well, I disagree with this  
11 paragraph.

12 MR. PURCEL: He said keeping aside the 50,000 --

13 THE DEFENDANT: Yes, I agree with that.

14 MR. PURCEL: That you did take the \$20,429?

15 THE DEFENDANT: Yes.

16 THE COURT: And just so we're clear, you are  
17 admitting that you, through the enterprise that Mr. Karol  
18 just described, you took \$20,429?

19 THE DEFENDANT: Yes.

20 THE COURT: You dispute the government's and/or  
21 the credit union's characterization that that same action by  
22 you resulted in the loss of \$52,787.03?

23 THE DEFENDANT: Exactly.

24 THE COURT: You understand that's a determination  
25 for sentencing, but your guilt for the offense charged is

1 premised on the \$20,429 which you are admitting that you  
2 took, and you took it the way Mr. Karol described, from the  
3 people Mr. Karol said you took it from? You agree in every  
4 other regard with what Mr. Karol said, correct?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Thank you.

7 Mr. Purcel, do you wish to add anything else or make  
8 any other corrections?

9 MR. PURCEL: No, Your Honor.

10 THE COURT: Ms. Smith, what is your plea to the  
11 information?

12 THE DEFENDANT: Guilty.

13 THE COURT: Is your plea entirely voluntarily  
14 made without threats or promises for you to enter into this  
15 plea?

16 THE DEFENDANT: Yes.

17 THE COURT: Your plea then is of your own free  
18 will because you are guilty, correct?

19 THE DEFENDANT: Correct.

20 THE COURT: Since you acknowledge that you are in  
21 fact guilty as charged in the information and that you have  
22 freely waived indictment in this case, that there is an  
23 adequate factual basis for your plea, that you've had the  
24 assistance of an able lawyer, that you know your right to a  
25 trial which is being waived if your plea is accepted, you

1 know what the maximum possible punishment is and what the  
2 advisory guidelines preliminarily provide, and on the basis  
3 of the answers given by you under oath and on the record and  
4 in the presence of your lawyer as well as the remarks of  
5 counsel for both sides, I hereby find as follows:

6 I find that you were advised of your constitutional  
7 rights; that you made a knowing, intelligent, and voluntary  
8 waiver of those rights; and further that you've been advised  
9 of your limited rights for appeal of both the plea and the  
10 sentence.

11 I further find that the plea was made knowingly,  
12 voluntarily, and with an understanding of the charge and the  
13 maximum penalties involved, and the affects of the plea.

14 Accordingly, I'm entering a finding and recommendation  
15 of a plea of guilty which will be submitted to the district  
16 judge.

17 If Judge Carr accepts and adopts my findings, a guilty  
18 entry -- a guilty judgment shall enter forthwith.

19 To expedite the completion of this case, the matter  
20 will be immediately referred to the probation office for the  
21 preparation of a presentence report which we talked about  
22 before.

23 Sentencing will take place not earlier than 15 weeks  
24 from when the district judge adopts my recommendation and  
25 enters the judgment upon a guilty plea.

1           The parties are instructed to review the presentence  
2 investigation report, to file any objections to that report,  
3 and to file any additional presentence memorandum in advance  
4 of the sentencing hearing.

5           Ms. Smith, you're expected to cooperate fully and  
6 completely with the preparation of the presentence report.  
7 Failure to do so will certainly be called to the attention  
8 of the district judge prior to sentencing and would  
9 presumably be taken into consideration by him in determining  
10 the appropriate sentence and particularly whether to grant  
11 credit for acceptance of responsibility, so conduct yourself  
12 accordingly.

13           Mr. Karol, what is the government's position with  
14 regard to presentence release or detention?

15           MR. KAROL: We concur with the recommendation of  
16 a \$10,000 unsecured bond, and she -- prior to the Court  
17 entering the court, her attorney requested, and we have no  
18 objection to a modification of the condition that she be  
19 allowed to travel to Cincinnati to visit her mother. Her  
20 travel was restricted to the Northern District of Ohio.  
21 That would require travel to the Southern District. The  
22 government has no objection to that.

23           THE COURT: Ms. Lafferty?

24           THE PRETRIAL SERVICES OFFICER: No objection.

25           THE COURT: Should we just say Ohio then?

1 THE PRETRIAL SERVICES OFFICER: That's fine.

2 THE COURT: Ms. Smith, Mr. Purcel, do you folks  
3 have a copy of the presentence report and  
4 recommendation -- not presentence, pretrial services  
5 recommendation?

6 MR. PURCEL: Yes, Your Honor. We do have a copy.

7 THE COURT: Could you follow along with those as  
8 I go through them.

9 Ms. Smith, what I'm going to go through -- I'm going  
10 to follow the recommendation.

11 Do you have any objections, Mr. Purcel --

12 MR. PURCEL: None whatsoever.

13 THE COURT: -- to the terms and conditions?

14 Ms. Smith, I'm going to follow the recommendation  
15 that's been made by pretrial services here, and I am going  
16 to order that you be released on a \$10,000 unsecured bond.  
17 I'm going to put certain terms and conditions on that bond  
18 which it's really important that you follow because your  
19 failure to follow one of these terms and conditions may well  
20 result in your -- in revocation of your terms of release.  
21 It can also result in separate charges for another criminal  
22 offense. Particularly your failure to appear is a serious  
23 offense and would be prosecuted as such.

24 Furthermore, you need to understand that your  
25 commission of any other crime, state or local, while you're

1 under this release is itself -- can result in much more  
2 serious punishment for that crime because of the fact that  
3 you're out on this terms of release.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. I want you to listen real  
7 closely as I give you the terms and conditions. You're also  
8 going to get them in writing and then you're going to be  
9 asked to sign them. But it's real important that you and I  
10 look each other in the eye and we understand what's going on  
11 here, okay?

12 THE DEFENDANT: Yes.

13 THE COURT: To reasonably assure your appearance  
14 and the safety of the community, it will be the finding of  
15 the Court that you be released on a \$10,000 unsecured bond  
16 with the following conditions:

17 You shall not commit any offense in violation of  
18 federal, state, or local law while on release in this case.

19 You shall immediately advise pretrial services, the  
20 defense counsel, and the U.S. attorney in writing before any  
21 change in address and/or telephone number.

22 You shall refrain from possessing a firearm,  
23 destructive device, or dangerous weapon.

24 It's my understanding that there are firearms in your  
25 home but that they are kept in a compartment now, they're in

1 a safe, and that you will not have access to that; is that  
2 correct?

3 THE DEFENDANT: It is correct.

4 THE COURT: And it's your statement here on the  
5 record under oath that you will not have access to those  
6 weapons?

7 THE DEFENDANT: I do not and I will not.

8 THE COURT: Okay, because you understand as a  
9 condition of letting you go home we could order that those  
10 be removed from the home, but I'm not going to do that.

11 THE DEFENDANT: Yes.

12 THE COURT: I'm going to let you do what you just  
13 did, okay.

14 So you shall refrain from possessing a firearm,  
15 destructive device, or dangerous weapon.

16 You shall be restricted in your travel to the State of  
17 Ohio and/or subject to further order of this Court.

18 You shall refrain from the use or unlawful possession  
19 of a narcotic drug or other controlled substance as defined  
20 in 21 U.S.C. Section 802 unless it's prescribed by a  
21 licensed medical practitioner.

22 You shall appear at all proceedings as required and  
23 shall surrender for service of any sentence imposed as  
24 directed.

25 You must cooperate in the collection of a DNA sample



1 if the collection is authorized by 42 U.S.C. Section  
2 1413(a) .

3 You must submit to pretrial services supervision as  
4 directed and submit to home, employment -- home or  
5 employment visits by pretrial services as deemed necessary  
6 and promptly inform pretrial services of any address, phone  
7 number, or employment changes.

8 You shall comply with the Northern District of Ohio  
9 defendant offender employment policy which may include  
10 participation in training, education, counseling, and/or  
11 daily job search as directed by the pretrial services and/or  
12 probation officer.

13 If you are not in compliance with the condition of  
14 supervision requiring full-time employment at a lawful  
15 occupation as directed by pretrial services, you may be  
16 directed to perform up to 20 hours of community service per  
17 week until employed.

18 Do you understand all those terms?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you willing to abide by those?

21 THE DEFENDANT: I am, yes.

22 THE COURT: I remind you that your failure to  
23 appear at the sentencing hearing is a separate criminal  
24 offense for which severe penalties can attach. And if you  
25 commit a crime while on release you'll be subject to a more

1 severe penalty than those which will be imposed upon other  
2 defendants for the same crime.

3 Have you understood everything we have covered today?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you have any final questions of  
6 me, anything about the case, your plea, the hearing today?

7 THE DEFENDANT: I don't think so.

8 THE COURT: Anything from counsel?

9 MR. KAROL: Nothing further, Your Honor. Thank  
10 you very much.

11 MR. PURCEL: Nothing further, Your Honor.

12 THE COURT: Okay. Court is adjourned.

13 (Proceedings concluded at 3:19 p.m.)  
14

15 C E R T I F I C A T E  
16

17 I certify that the forgoing is a correct  
18 transcript from the record of proceedings in the  
19 above-entitled matter.  
20

21 S/Caroline Mahnke

1/13/2011

22 Caroline Mahnke, RMR, CRR

Date

23  
24  
25